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Book Reviews

A SUPPLEMENT TO A TREATISE ON THE SYSTEM OF EVIDENCE IN TRIALS AT COMMON LAW. By John H. Wigmore. Second edition. Little, Brown & Co., 34 Beacon St., Boston. 1915. pp. xlv, 935. \$6.50 net.

The experience of the profession in the practical use for ten years of Wigmore on Evidence shows the inherent soundness of the work. Little has been rewritten or modified. Where additional text has been inserted it usually indicates a new development in the law. Of particular note in this connection is the warning against executive usurpation by making the certificate of administrative officers conclusive for certain purposes, as in the immigration statutes (page 296). It is by such insidious methods employed by various executive and administrative departments, bureaus and commissions of the government, both federal and state, that the rights of citizens can be taken away without a fair hearing. Another excellent suggestion is made under the Confession Rule (page 182). The public are disgusted with the acquittal of self-confessed criminals on some technicality that has no real effect on the truth of the confession. At the same time the third degree outrages of the police are equally intolerable. The proposal of the author is to require the accused person to be taken before an authorized magistrate within a day after arrest for private examination, being warned that he may keep silent, but his statement to be taken down if he is willing to make one.

The greater part of the volume is made up of citations classified by states, usually with a brief indication of the point decided arranged under the proper section and note number of the main treatise. This may seem dry, but it is not, for every page sparkles with anecdote or the picturesque comment of the author on some misguided ruling, as on page 308, where the author notes the amusing see-saw performance of the Texas courts on the admission in criminal cases of the former testimony of a deceased witness. In Maryland the court excluded the question "Please state whether or not, in your opinion, that horse was fit for a lady to drive." To which the author remarks, "Thus is Common Sense shut out of court and Scholasticism enshrined on an altar" (page 451). A New York judge doubted as to whether in a murder case evidence could be admitted that keys with a tag bearing defendant's name were found at the place of crime. Comment as follows: "This case shows how different a man the judge is when reasoning about his own affairs at home and reasoning in the judicial straitjacket; suppose he had forbidden a certain young man to court his daughter and then one morning found on the parlor floor by the sofa a bunch of keys with the tabooed young man's name; would he hold that 'there was some doubt whether the evidence was properly admitted'?" (page 45).

One glancing over this volume, however, must feel that a system of evidence which produces in ten years so many rulings of so little intrinsic value, and which produces so many that affront common sense must be in itself defective. We therefore turn to the preface where the author lays bare the causes of the disease and indicates the cure. It is refreshing in these days of the muckraker to have an expert, such as Professor Wigmore, say, "Amidst the ululations of the demagogues, and the suspicions of the laity, it is a duty to express a sense of satisfaction at the lack of reasonable grounds for complaint on the score of corrupt intent and political bias." (Preface, page x).

An abstract cannot do justice to the constructive proposals of the author in this preface. Every lawyer should read it for himself. As is pointed out, however, so much of the trouble rests in the imperfections of human nature and society that while some specific legislation is desirable, general improvement can come only with the gradual improvement of social conditions. "Sound rules of evidence, in short, are as much a symptom as a cause of better justice."

A. M. K.

GOOD WILL, TRADE MARKS AND UNFAIR TRADING. By E. D. Rogers. A. W. Shaw Co., Wabash Ave. and Madison St., Chicago, Ill. 1914. pp. 288. \$2.50 net.

Although written by a lawyer of wide experience in this branch of the law the publishers say that it is not a law book. It is, however, more entertaining and probably more useful than most of the conventional legal treatises. The author has given an interesting history of trade marks and unfair competition in different countries since the dawn of civilization, and has then taken up the practical questions of building good will for business, helping the public identify the product and defending the business from unfair competition. There is a wealth of suggestion and apt illustration in the treatment of the subject, much of it from the author's own experience and impossible to find elsewhere in books. The reader is not likely to forget in practice the wisdom of advising his clients to preserve complete records of their trade marks and labels, the time, place and character of use, together with exhibits. Nor is one likely to forget the author's warning that unfair competition cases, as distinguished from those of technical trade mark, usually turn on questions of fact that cannot be properly determined by a mere comparison of labels. For the successful prosecution of such cases the lawyer must do or have done the detective work of ascertaining whether people have been deceived. A few cases of actual deception are worth hours of expert testimony and argument. The advisability of relentless pursuit of willful infringers without notice is forcibly presented and illustrated.